

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

UNITED STATES OF AMERICA,

Plaintiff/Respondent,

vs.

ROBERT C. LARSON,

Defendant/Movant.

Cause No. CR 03-88-BLG-SPW
CV 19-95-BLG-SPW

ORDER DISMISSING AND
TRANSFERRING § 2255 MOTION
AND DENYING CERTIFICATE OF
APPEALABILITY

On September 16, 2019, Defendant/Movant Larson filed a motion to vacate, set aside, or correct the sentence under 28 U.S.C. § 2255. Larson is a federal prisoner proceeding pro se.

Larson filed a § 2255 motion on February 12, 2007 (Doc. 143). The motion and a certificate of appealability were denied in the District Court on March 19, 2008 (Doc. 148). The Court of Appeals denied a certificate of appealability (Doc. 152) and the United States Supreme Court denied Larson's petition for writ of certiorari (Doc. 155).

The Court of Appeals has not authorized Larson to file a second § 2255 motion in this Court. *See* 28 U.S.C. §§ 2255(h), 2244(b). The motion must be dismissed for lack of jurisdiction. *See Burton v. Stewart*, 549 U.S. 147, 149 (2007) (per curiam).

A certificate of appealability is denied because the case is clearly controlled by *Burton*. See *Gonzalez v. Thaler*, 565 U.S. 134, 140 (2012) (quoting *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)).

The Court of Appeals would have jurisdiction, however, to entertain an application for leave to file a second or successive motion. See 28 U.S.C. §§ 1631, 2244(b)(3)(A). Larson attached an application to his motion. The motion will be transferred.

Accordingly, IT IS ORDERED:

1. Larson's motion under 28 U.S.C. § 2255 (Doc. 180) is DISMISSED as an unauthorized second or successive motion and TRANSFERRED to the Court of Appeals.

2. A certificate of appealability is DENIED. The clerk shall immediately process the appeal if Larson files a notice of appeal.

3. The clerk shall ensure that all pending motions are terminated and shall close the civil file by entering, by separate document, a judgment of dismissal.

DATED this 17th day of September, 2019.


Susan P. Watters
United States District Court